

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE INTRASTATE)
SWITCHED ACCESS RATES OF ALL KENTUCKY) ADMINISTRATIVE
INCUMBENT AND COMPETITIVE LOCAL) CASE NO. 2010-00398
EXCHANGE CARRIERS)

O R D E R

On March 22, 2012, the Commission issued an Order in this case in which it noted that the Federal Communications Commission ("FCC") had released an Order that, inter alia, comprehensively reformed intercarrier compensation.¹ The Commission noted that the most notable change regarding compensation reform is that the FCC had determined that reciprocal compensation and terminating access charges, both interstate and intrastate, should incrementally move to a "bill and keep" regime.²

The FCC capped all terminating access and reciprocal compensation rates on December 29, 2011. The FCC also established a timeline whereby the rates will transition to zero.

¹ In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform: Mobility Fund, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011), ("ICC/USF Order").

² March 22, 2012 Order at 1.

The Commission found that, pursuant to the ICC/USF Order, the Commission had limited jurisdiction to issue an Order affecting intrastate terminating access rates. The Commission concluded that it was appropriate that all interested parties be given an opportunity to comment on the Commission's finding and to make recommendations as to how the proceeding should progress in light of the ICC/USF Order. The Commission ordered all parties to file comments addressing: suggestions on further proceedings in this case; the effect on the Non-Traffic Sensitive rate element; and whether any of the parties had any intentions to implement the Access Recovery Charge ("ARC").

In their comments, the parties agreed with the Commission's conclusion that the FCC had limited the Commission's jurisdiction with regard to intrastate access rates. The majority of the parties also recommended that the Commission close this proceeding because the FCC had preempted the Commission from acting. BellSouth Telecommunications, LLC d/b/a AT&T Kentucky ("AT&T") was the only party that filed a detailed plan with regard to procedure for the filing of the revised intrastate access tariffs as required by the FCC.³ AT&T suggested that the Commission: (1) require the parties to file their access data and tariffs early;⁴ (2) enter a protective order;⁵ (3)

³ No parties have objected to AT&T's recommendations.

⁴ AT&T's Comments In Response to the Commission's March 22, 2012 Order ("AT&T's Comments") at 7-11.

⁵ *Id.* at 11.

impose enforcement provisions;⁶ (4) allow for dispute resolution;⁷ and, (5) require all carriers to utilize the FCC's adopted standardized spreadsheets when providing the access data related to reduction of intrastate retail rates.⁸

AT&T states that analyzing the intrastate access rate deductions required by the FCC is not simple or a straightforward percentage reduction in rates. AT&T asserts that the FCC established a more involved process under which all LECs establish new rates to reflect a 50 percent reduction in revenues generated at specific demand levels.⁹ AT&T argues that because these calculations are complex, the correct access rate may not be apparent from a tariff filing and that the Commission cannot fulfill its responsibility to enforce compliance with the FCC Order through a tariff filing alone. AT&T has proposed that the Commission require the carriers to file the following information:¹⁰

1. Fiscal Year 2011 intrastate demand for each rate element included in "Transitional Intrastate Access Service" as the term is defined in 47 C.F.R. § 51.903(j);
2. All intrastate access rates in effect as of December 29, 2011;
3. All interstate access rates in effect as of December 29, 2011;
4. If the carrier's intrastate rate structure and the interstate rate structure are not the same, the carrier should

⁶ *Id.* at 11-13.

⁷ *Id.* at 13-14.

⁸ AT&T's Supplemental Comments In Response to the Commission's March 22, 2012 Order at 2.

⁹ *Id.* at 8, *citing*, 47 C.F.R. §§ 51.907, 51.909, 51.911

¹⁰ *Id.* at 9.

provide an explanation, including all calculations and underlying assumptions, of how Fiscal Year 2011 intrastate demand for Transitional Intrastate Access Service will be mapped into its interstate rate structure to determine “revenue from Transitional Intrastate Access Service at the carrier’s interstate access rates” for purposes of the FCC-mandated revenue reduction calculations. 47 C.F.R. §§ 51.907(b)(2), 51.909(b)(2), 51.911(b);

5. A full description of the methodology the carrier will use to set revised rates to reflect the calculated revenue reduction. See 47 C.F.R. §§ 51.907(b)(2)(iv) and (v); 51.909(b)(2)(iv) and (v).

6. A full description of the rate structure the carrier will opt to utilize as of July 1, 2012, as appropriate under 47 C.F.R. §§ 51.907 (price cap carriers), 51.909 (rate-of-return carriers), and 51.911 (competitive local exchange carriers).

AT&T asserts that the above data points will help the Commission ensure that the carriers are complying with the FCC’s Order.

AT&T also suggests that the Commission issue a protective order covering the proposed tariff filings. AT&T states that, while some of the parties to the case have entered into confidentiality agreements for the exchange of confidential information, not all the parties have done so. Therefore, AT&T suggests the entry of a protective order to allow the confidential filing and appropriately limited review of data accompanying the tariff filings.

AT&T recommends that the Commission impose enforcement provisions to encourage all carriers to file the recommended data points listed above, and to ensure that the July 1 access reductions are implemented as the FCC intended.¹¹ AT&T recommends that the Commission declare a presumption that any carrier failing to file

¹¹ *Id.* at 11.

the required data has failed to properly reform its rates in accordance with the USF/ICC Order and that, as a result, the intrastate access rates are null and void as of July 1, 2012, pending a full investigation of the rates and supporting data.¹² AT&T claims that other state Commissions, such as Massachusetts, Ohio, Maryland, and Alabama have used similar compliance techniques with access tariff filing deadlines.

AT&T also recommends that the Commission allow for dispute resolution.¹³ AT&T states that it “plans to carefully review all carriers’ intrastate access and VOIP-PSTN tariffs and the underlying data supporting the tariffs.”¹⁴ AT&T requests that the proposed protective order permit all interested stakeholders (that execute a confidentiality agreement) to have access to all completed data that the carriers submit. AT&T further requests that the carriers provide electronic copies of the tariff supplements and supporting templates to such stakeholders.

On April 19, 2012, the FCC issued an order that adopted standardized spreadsheets for carriers to use in calculating their July 1, 2012 intrastate access reductions.¹⁵ AT&T’s final recommendation is for the Commission to require the parties to make the tariff filings using the standardized spreadsheets containing the required information.

¹² *Id.* 11-12.

¹³ *Id.* at 13.

¹⁴ *Id.*

¹⁵ In the Matter of the Material to be Filed in Support of 2012 Annual Access Tariff Filings, WCB/Pricing File No. 12-08, DA 12-575 (rel. Apr. 19, 2012) (April 19, 2012 Order).

The Commission finds merit in many of AT&T's recommendations. For example, an organized and early filing of the tariffs and supporting material, as well as utilizing the FCC's standardized spreadsheets, will allow for an orderly transition to the ICC/USF rate structure. Likewise, there is merit in the imposition of enforcement provisions.

A problem exists, however, with the request that the Commission enter a protective order. The regulation that governs confidential material, 807 KAR 5:001, Section 7, outlines the procedure for obtaining confidential treatment of filed material. The regulation does not permit the Commission to grant confidential treatment to filings before the act of filing. Similarly, the regulation provides that parties wishing to view confidential material may do so after executing a protective agreement and also prescribes procedures for when access to that material is denied. 807 KAR 5:001, Section 7(6) and (7).

Based on the foregoing, we will accept AT&T's recommendations that tariff filings be made as soon as possible and that those filings must contain certain data points and FCC standardized spreadsheets. We also will accept AT&T's recommendation to implement enforcement provisions. However, we decline to issue a protective order or allow for dispute resolution.

IT IS HEREBY ORDERED that:

1. No later than June 1, 2012, all affected parties shall file their proposed intrastate access tariffs containing an effective date of July 3, 2012.¹⁶ The tariff filings shall be accompanied by the following information:

¹⁶ The FCC subsequently changed the date [from July 1, 2012 to July 3, 2012] by which the access tariffs should be effective. See In the Matter of Annual Access Charge Tariff Filings, ¶ 2, n.3 (rel. Mar. 28, 2012).

a. Fiscal Year 2011 intrastate demand for each rate element included in "Transitional Intrastate Access Service" as the term is defined in 47 C.F.R. § 51.903(j);

b. All intrastate access rates in effect as of December 29, 2011;

c. All interstate access rates in effect as of December 29, 2011;

d. If the carrier's intrastate rate structure and the interstate rate structure are not the same, the carrier should provide an explanation, including all calculations and underlying assumptions, of how Fiscal Year 2011 intrastate demand for Transitional Intrastate Access Service will be mapped into its interstate rate structure to determine "revenue from Transitional Intrastate Access Service at the carrier's interstate access rates" for purposes of the FCC-mandated revenue reduction calculations. 47 C.F.R. §§ 51.907(b)(2), 51.909(b)(2), 51.911(b);

e. A full description of the methodology the carrier will use to set revised rates to reflect the calculated revenue reduction. See 47 C.F.R. §§ 51.907(b)(2)(iv) and (v); 51.909(b)(2)(iv) and (v).

f. A full description of the rate structure the carrier will opt to utilize as of July 1, 2012, as appropriate under 47 C.F.R. §§ 51.907 (price cap carriers), 51.909 (rate-of-return carriers), and 51.911 (competitive local exchange carriers).

2. The tariff filings shall conform to the standardized spreadsheets that the FCC established in its April 19, 2012 Order.

3. Any carrier failing to file the required data in ordering paragraph 1 will be presumed to have failed to properly reform its rates in accordance with the USF/ICC

Order and, as a result, the intrastate access rates shall be null and void as of July 3, 2012, pending a full investigation of the rates and supporting data.

By the Commission

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MAY 30 2012
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